
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

SBC Communications, Inc.,)	
SBC Delaware, Inc.,)	
Ameritech Corporation,)	
Illinois Bell Telephone Company)	
d/b/a Ameritech Illinois, and)	
Ameritech Illinois Metro, Inc.)	
)	
)	<i>ICC Docket No. 98-0555</i>
)	
Joint Application for approval of the)	
reorganization of Illinois Bell Telephone)	
Company d/b/a Ameritech Illinois, and the)	
reorganization of Ameritech Illinois Metro,)	
Inc. in accordance with Section 7-204 of the)	
Public Utilities Act and for all other)	
appropriate relief.)	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION
MOTION TO REOPEN
FOR THE PURPOSE OF CLARIFICATION OF ORDER**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and hereby moves, pursuant to 83 Illinois Administrative Code Section 200.190, that the Commission reopen the proceeding for the purpose of providing clarification to its Final Order. In support of this motion, Staff states as follows:

1. On July 24, 1998, Ameritech Illinois ("Ameritech") and SBC Communications ("SBC") (herein referred collectively as "Joint Applicants") filed with the Commission a Joint Application for approval of the reorganization of Ameritech Illinois, and the reorganization of Ameritech Illinois Metro, Inc. in accordance with Section 7-204 of the Public Utilities Act and for all other appropriate relief.

2. Evidentiary hearings were held January 25 through January 29, 1999, at the offices of the Commission in Chicago, Illinois. At the conclusion of the hearings on January 29, 1999, the record was marked "Heard and Taken." On June 10, 1999, Joint Applicants filed a Motion to Reopen the record and additional evidentiary hearings were held on July 13, 14, and 15, 1999. At the conclusion of the hearings on July 15, 1999, the record was once again marked "Heard and Taken."

3. On September 23, 1999, the Commission entered an Order in Docket No. 98-0555. The Order outlines several conditions imposed on the Joint Applicants as a result of the merger's approval. In order to ensure the Joint Applicants' compliance with the Order, the Staff of the Illinois Commerce Commission ("Commission Staff") respectfully requests clarification on the following issues. However, if the Commission believes Staff suggested clarifications are not warranted, Staff recommends the Commission maintain the existing language as set forth in the Order.

Recovery of Third Party Costs

4. Some conditions require an independent third party auditor or third party to assist in the review of several reports or provide technical assistance which will be selected by the Commission and paid by the Joint Applicants. (See Order at 240, 243, 244, 246 and 255, Condition numbers 7, 16, 19, 25, 26 and 29.) It remains unclear, however, whether such costs shall be borne by the Joint Applicants or the ratepayers.

5. The public interest requires that the proceeding be reopened for the Commission to clarify its Order to direct the Joint Applicants to recover the auditing costs through their shareholders instead of the rate payers in order to ensure that the merger does not adversely impact rates.

6. Staff proposes the following clarifications to the Commission Order to address this concern:

Conditions 7 and 19: . . . The report shall be examined by the Commission and audited with the assistance of a [sic] independent third party selected by the Commission and paid for by AI. AI shall not net third party auditing costs against merger savings or otherwise recover the auditing costs from ratepayers.

Order at 240 and 243.

Condition 16(e): Third Party Audit - Conditions concerning updated CAMs are to be complied with by the Joint Applicants and reviewed and audited by the Commission with the assistance of an independent third party selected by the Commission and paid for by the Joint Applicants. The

Joint Applicants shall not net third party auditing costs against merger savings or otherwise recover the auditing costs from ratepayers.

Order at 240 and 243.

Condition 25: Joint Applicants will, at their own expense, annually engage independent auditors to verify SBC/Ameritech's compliance with these commitments. The Joint Applicants shall not net third party auditing costs against merger savings or otherwise recover the auditing costs from ratepayers.

Order at 245.

Condition 26: . . . The Commission shall hire at the Joint Applicant's expense, a third party auditor to develop accounting standards and assist the Commission in tracking merger related savings as determined by this order. The Joint Applicants shall not net third party auditing costs against merger savings or otherwise recover the auditing costs from ratepayers.

Order at 246.

Condition 29: . . . Phase 3: . . . The Joint Applicants are required to pay for an independent third-party, retained by the Commission, for the technical assistance to the Commission as an arbitrator and to Staff through out the phased OSS implementation process. The Joint Applicants shall not net third party technical costs against merger savings or otherwise recover the auditing costs from ratepayers. . .

Order at 255.

The Definition of Savings

7. Additionally, the public interest requires reopening for the purpose of clarification of the Commission's Order in order to define what type of savings will be tracked and then passed along to ratepayers.

8. The Commission's Order states that "savings" shall be construed as it is "ordinarily understood, namely, a reduction in costs or expenses." (Order at 147). Costs typically include capital costs, as well as operating costs or expenses. By including the term "expenses" with costs, the Commission's Order may be interpreted to limit the types of costs that are to be tracked and then netted against savings to be shared with ratepayers through rate reductions.

9. Staff proposes the following clarification to the Commission Order:

To begin, we agree with the Joint Applicants that the term "savings" in Section 7-204 (c)(i) refers to an actual reduction in costs ~~or~~ and expenses.

Order at 146.

Looking to the particulars of Section 7-204(c), the plain language doctrine again leads us to construe "savings" as that term is ordinarily understood, namely a reduction in costs ~~or~~ and expenses.

Order at 147.

Recovery of Administrative Costs of the Consumer Education and the Consumer Technology Funds

10. The public interest will also be served by clarifying that administrative costs of the Consumer Education and Consumer Technology Funds will not be recovered through the ratepayers. This clarification will ensure that the merger does not adversely impact Ameritech's rates.

11. Staff proposes the following clarification to the Commission Order:

With regards to the CEF and CTF, we agree with Staff that it would be inappropriate and discriminatory for ratepayers to bear the costs of these special interest funds. Therefore, we conclude all costs associated with these funds, including the cost to administer the funds, should not be netted against merger savings or otherwise recovered from ratepayers.

Order at 232.

OSS Commitments

12. The public interest also requires reopening for the purpose of clarification of the Commission's Order regarding timetables and milestones regarding integration of OSS processes in Illinois. The Commission's Order provides:

Phase 1: Within 3 months after the Merger Closing Date or final regulatory approval, Joint Applicants shall complete a publicly available Plan of Record which shall consist of an overall assessment of SBC's and Ameritech's existing OSS interfaces, business processes and rules, hardware and data capabilities, and security provisions, and differences, and the companies' plan for developing and deploying application-to-application interfaces and graphical user interfaces for OSS, as well as integrating their OSS processes. The Plan of Record shall be accepted, or rejected, by this Commission after an expedited (two week) CLEC comment cycle.

Order at 253-254.

13. Staff seeks clarification on the appropriate procedural mechanism (ie. Staff report, evidentiary hearing) by which the Plan of Record will be "reviewed, accepted, or rejected" by the Commission upon completion of the expedited CLEC comment cycle. Staff believes time is of the utmost importance since a lengthy delay in reviewing the Plan of Record could impact the three phase timeline for OSS implementation, deployment and compliance.

14. Staff, therefore, proposes the following clarification to the Commission Order:

The Plan of Record shall be accepted, or rejected, by this Commission after an expedited (two week) CLEC comment cycle and upon the recommendation of Staff via the issuance of a Staff report evaluating the Plan of Record.

Order at 254.

Performance Measures, Benchmarks & Liquidated Damages Provisions

15. The public interest requires that the proceeding be reopened for the Commission to clarify its Order regarding the liquidated damages payable by the Joint Applicants in the event they fail to meet certain performance measures. Specifically, the Order provides: "Liquidated damages for failure to implement the performance measures shall not exceed \$90 million." (Order at 221).

16. The Order contemplates two types of penalties: *implementation* and *performance*. A \$30 million implementation penalty will apply should the Joint Applicants fail to implement the 122 benchmarks in Illinois. Once the benchmarks are in place, a \$90 million penalty will be incurred for failure to meet those benchmarks.

17. Consequently, Staff proposes the following clarification to the Commission Order:

Liquidated damages for failure to ~~implement~~ satisfy the performance

measures shall not exceed \$90 million.

Order at 221.

18. The same sentence is found on page 257 of the Order. Staff proposes the same exact changes be made to this sentence as in paragraph 21 above. Additionally, the sentence is more appropriately placed at the end of paragraph 8 on page 259 of the Order since that paragraph discusses remedies associated with failure to meet the standards/benchmarks.

19. Finally, Staff seeks clarification on the portion of the Commission's Order requiring the Joint Applicants " . . . to provide monthly performance monitoring reports and website information to the Commission on a disaggregated CLEC-by-CLEC basis." (Order at 259).

20. The public interest requires that the proceeding be reopened for the Commission to clarify its Order regarding the confidentiality of certain information. Since the Commission Order contemplates the Joint Applicants reporting information that may be potentially sensitive to CLECs, confidentiality issues may arise regarding the information to be provided to the Commission.

21. Staff, therefore, proposes the following clarification to the Commission

Order:

Joint Applicants are ordered to provide monthly performance monitoring reports and website information to the Commission on a

disaggregated CLEC by CLEC basis. The Commission will handle this information in a confidential manner.

Order at 259.

Conclusion

WHEREFORE, for all the reasons stated herein, the Staff of the Illinois Commerce Commission respectfully requests that the Commission reopen the proceeding for the purpose of clarification of its Order to make it explicit that: (1) the Joint Applicants are to recover auditing costs through their shareholders as opposed to the rate payers; (2) the term “savings” encompasses a reduction in costs and expenses; (3) administrative costs of the Consumer Education and Consumer Technology Funds will not be recovered through ratepayers; (4) the Plan of Record addressing OSS will be evaluated pursuant to the issuance of a Staff Report at the conclusion of the two week CLEC comment cycle; (5) the \$90 million liquidated damages penalty applies to the Joint Applicants’ failure to satisfy the performance measures after they have been implemented; (6) and, any monthly performance monitoring reports and website information submitted to the Commission will be handled in a confidential manner.

DATED this ____ day of November, 1999.

Respectfully submitted

Illinois Commerce Commission Staff

By: _____
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